

IN RE: Annual Review of Base Rates for Fuel Costs) ORDER DENYING
for South Carolina Electric & Gas Company) REHEARING OR
) RECONSIDERATION

The parties raise numerous issues which they ask the Commission to reconsider or rehear and to reach different findings and conclusions. The Order was comprehensive, supported by the evidence of record, and consistent with the statutes which govern fuel proceedings. All the concerns raised by the petitions are properly handled in a single Commission order, since many of the concerns raised are similar or identical.

First, as to the principal concern raised by the South Carolina Energy Users Committee, we clarify now that it was the Commission's intention, having received no objection and with mutual agreement, to order SCE&G to, upon written request by any party of record, provide to that party (1) copies of the monthly fuel recovery reports currently filed with the Commission and ORS and (2) quarterly forecasts beginning with the quarter ending June 30, 2018, of the expected fuel factors to be set at SCE&G's next annual fuel proceeding and SCE&G's historical over/under-collected balance to date.

In previous fuel proceedings, SCE&G and the other parties - then parties to settlement agreements - would mutually consent that SCE&G would put forth reasonable efforts to forecast its expected fuel factors to be set at the next annual fuel proceeding and that these quarterly good-faith forecasts would not be admitted into evidence in any future SCE&G proceeding. In this proceeding the parties wish to be similarly bound by all aspects of those legacy agreements and so we impose the duties and limitations historically included in the parties' settlements in previous fuel proceedings into our decision and Order in this Docket. In effect, we grant the Energy Users' Petition and, to the extent that other parties have sought the same relief in their respective petitions, that relief is also granted.

Several of the petitions have raised the issue that our Order improperly shifted the burden of proof from SCE&G to the Intervenor or ORS. That contention is a mischaracterization of Order No. 2018-322(A). The Commission did not shift the burden from SCE&G to the other parties, and the burden of proof always resides, as it must, with SCE&G. However, the other parties do have a burden of persuasion that their proposed

alternatives are reasonable and viable if they seek adoption of those alternatives, as they did in this proceeding.

The Petitioners assert that they presented alternatives to SCE&G's proposed avoided capacity cost factor, but none of those parties offered probative evidence of a computed factor as opposed to a mere concept for deriving a factor, such as ORS Witness Horii proposed for Commission consideration. None of the proposals of those parties represent fully viable alternatives. Consequently, the parties failed to meet their burden of persuasion to prove to this Commission the reasonableness and viability of any alternatives to SCE&G's proposal.

Several of the parties assert that SCE&G's responses to their discovery requests were insufficient to allow them to prepare evidence by which they might have proposed alternatives to SCE&G's proposed avoided-cost factor. For example, the ORS complains that, "SCE&G failed to cooperate by providing complete and reliable data in a timely manner and, therefore, had the ability to dictate the extent to which other parties could present their cases."¹ Various discovery devices are available to enable a party to gather information to prepare and present evidence in our proceedings. If there were a discovery dispute, the proper mechanism to require a party to provide properly discoverable information is a motion to compel. No party moved to compel discovery in this proceeding.

Moreover, this Commission understood that all discovery issues were actually resolved prior to the hearing. For example, by its March 7th filing, the South Carolina Solar Business Alliance stated that, as a result of avoided cost issues being considered as a

¹ ORS Petition at pg. 6

part of the fuel case, it needed an additional 90 days to prepare its case, or, in the alternative, it requested that the case be continued until the parties had “ample time to complete discovery requests and report back to the Commission.” SBA argued that the issues were too complicated for adequate preparation in the existing timeframe. However, in resolution of the Petitioners’ shared concerns about adequacy of time for discovery, the parties later advised the Commission of an agreement among the parties, subsequently approved by the Commission by Directive Order No. 2018-178, that the company and the parties had resolved their differences. Specifically, they informed the Commission that these issues had been resolved through a commitment from SCE&G to provide discovery responses prior to their due date and to agree to extensions of SBA’s prefiled testimony deadlines. Therefore, this Commission issued an Order on March 14th approving the parties’ settlement resolving SBA’s initial request for a 90-day delay. The parties availed themselves of the concession by SCE&G with the filing of their direct and surrebuttal testimony. Having received the benefit of accelerated discovery production and additional time to file testimony, and this Commission’s approval of such a settlement, the parties’ position describing a lack of cooperation and time for preparation seems inconsistent with the prehearing representations and agreements.

There is a contention by the South Carolina Solar Business Alliance that using the approved avoided capacity factor from the most recent fuel case should enjoy a presumption of reasonableness and could be adopted as an alternative to SCE&G’s proposal. In this case, those Petitioners would have the Commission extract a single element (the avoided capacity factor) out of a historical fuel factor and ignore the effects

of the passage of time and all attendant changing circumstances. Pursuant to South Carolina Code Section 58-27-865(B), the fuel statute's recognition of changing environments and the appropriate and commensurate regulatory response compels us to revisit, reset, and redefine the fuel factors during these annual proceedings.

The use of a previously approved factor might be appropriate in the circumstance in which no party had satisfactorily proven its case. That is not the circumstance here. In Order No. 2018-322(A), this Commission made specific individual findings as to each element of SCE&G's proposed rates and we implicitly or explicitly found the underlying methodology for deriving them to be reasonable. Regarding this subject, SCE&G, upon whom the burden of proof resides, has met its burden.

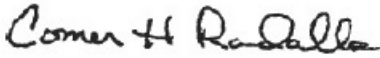
The SBA would have the Commission use post-hearing compliance filings to fill in evidentiary gaps after the hearing. While such a filing may be used to address a recalculation of narrow and specific adjustments to a proposed rate, it is inappropriate and improper for a party to attempt to use post-hearing compliance filings as a method to force an adverse party to generate the moving party's own proposals. Even if that were done, the proposal of such a factor would be effectively unavailable for cross-examination by the parties or exploration by this Commission.

Of course, nothing in this Order or in Order No. 2018-322(A) would preclude any party in future fuel proceedings from preparing and presenting evidence of alternatives to any proposal or concerning any presented issue.

IT IS THEREFORE ORDERED:

1. SCE&G shall, upon written request by any party of record, provide to that party (1) copies of the monthly fuel recovery reports currently filed with the Commission and ORS and (2) quarterly forecasts beginning with the quarter ending June 30, 2018, of the expected fuel factors to be set at SCE&G's next annual fuel proceeding and SCE&G's historical over/under-collected balance to date. SCE&G shall put forth reasonable efforts to forecast its expected fuel factors to be set at the next annual fuel proceeding, and these quarterly good-faith forecasts shall not be admitted into evidence in any future SCE&G proceeding.

2. All other relief requested in the Petitions for Rehearing or Reconsideration are denied.


Comer H. "Randy" Randall, Chairman

ATTEST:


Jocelyn Boyd, Chief Clerk/Administrator